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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,853	12/21/2005	Declan Patrick Kelly	NL 030725	3077
24737 7590 07/09/2008 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
CARDWELL, ERIC				
ART UNIT		PAPER NUMBER		
2189				
MAIL DATE		DELIVERY MODE		
07/09/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/561,853

**Applicant(s)**

KELLY ET AL.

**Examiner**

ERIC S. CARDWELL

**Art Unit**

2189

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/86)
- Paper No(s)/Mail Date 12/21/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

As required by M.P.E.P. ' 609 (C), the applicant's submission of the Information Disclosure Statement dated December 21<sup>st</sup>, 2005 is acknowledged by the examiner and the cited references have been considered in the examination of the claims now pending, except as noted below. As required by M.P.E.P. ' 609 C(2), a copy of the PTOL-1449 initialed and dated by the examiner is attached to the instant office action.

The NPL document "Stretching the Fabric of the Net..." has not been considered as the month and year are not given as required by MPEP 609.04(a).

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 9-16, claims to computer programs per se are not statutory subject matter. Specifically, "Software for control of selective creation of a backup..." in claim 9 the claims are drawn to non-statutory subject matter.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kanevsky et al. [US6496949]. Kanevsky teaches an emergency backup system.

Regarding claims 1 and 9, Kanevsky teaches a method of enabling to selectively create a backup of electronic content information [Kanevsky column 2, lines 46-48] on a home network [Kanevsky column 2, lines 18-28], the method comprising: determining a relative importance [Kanevsky column 3, lines 43-45] of the content information; and storing the backup under control of the relative importance determined [Kanevsky column 3, lines 36-45 and figure 2, features 120 and 122].

Regarding claims 2 and 10, Kanevsky teaches determining of the relative importance comprises determining a source of the content information [Kanevsky column 2, lines 37-45 vulnerable computers in the danger zone].

Regarding claims 3 and 11, Kanevsky teaches determining of the relative importance comprises determining a file format of the content information [Kanevsky column 4, lines 10-20, image data or text].

Regarding claims 4 and 12, Kanevsky teaches determining of the relative importance comprises determining a semantic attribute of the content information [Kanevsky column 3, lines 36-45, unopened e-mail].

Regarding claims 5 and 13, Kanevsky teaches comprising determining a storage mode corresponding to the relative importance determined [Kanevsky column 5, lines 63-67 and column 6, lines 1-10, greatest danger devices].

Regarding claims 6 and 14, Kanevsky teaches determining of the storage mode comprises determining a relevant one of multiple storage components available to the

home network [Kanevsky column 4, lines 60-67 and column 5, lines 1-3, maps of devices].

Regarding claims 7 and 15, Kanevsky teaches determining whether to distribute multiple copies among different ones of multiple storage components available to the home network [Kanevsky column 4, lines 21-29, identify local backup copies]

Regarding claims 8 and 16, Kanevsky teaches maintaining an overview of which content information has a backup copy [Kanevsky column 3, lines 1-9, generates a database].

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC S. CARDWELL whose telephone number is (571)270-1379. The examiner can normally be reached on Mon-Fri 8am-5pm Eastern Alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Reginald Bragdon can be reached on 571-272-4204. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. S. C./  
Examiner, Art Unit 2189

/Reginald G. Bragdon/  
Supervisory Patent Examiner, Art Unit 2189